उच्च न्यायालय, छत्तीसगढ, बिलासपुर

(27)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

CRIMINAL APPEAL NO.571/2005

[Single Bench: Hon'ble Mr. Justice Dhirendra Mishra]

APPELLANT (In Jail) — Pardeshiram Bhardwaj, son of Daduram Bhardwaj, aged 27 years, Cultivator, R/o Village Godam, P.S. and Tahsil Sarangarh, Distt. Raigarh (C.G.)

Vs

RESPONDENT — State of Chhattisgarh, through the Police Station P.S. Sarangarh, Tahsil Sarangarh, Distt. Raigarh.

Present:

Mr. Yogeshwar Sharma, Advocate for the appellant.

Mr. Arun Sao, Govt. Adv. for the respondent-State.

ORAL JUDGMENT

(14th September, 2007)

Per Dhirendra Mishra, J:

This appeal is directed against the judgment of conviction and order of sentence dated 18th May, 2005 passed in S.T. No.124/04 whereby learned 1st Additional Sessions Judge, Raigarh has convicted the appellant under Sections 450, 307 & 325 of the IPC and sentenced him to undergo R.I. for 7 years and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo S.I. for 4 months; R.I. for 7 years and to pay a fine of Rs.1,000/-, in default of

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payment of fine to further undergo S.I. for 4 months & R.I. for 3 years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo S.I. for 2 months respectively. All the sentences have been directed to run concurrently.

Case of the prosecution, in brief, is that in the intervening night of 23rd & 24th March, 2004 Vishnu Bhardwaj was in his house along with his family. His wife namely Bhajan Bai was sleeping in the verandah, whereas, his son namely Rohit was sleeping inside. Around 12.00 in the midnight the appellant forced entry through their door and asked Vishnu that he has stood surety of Chandra Shekhar Ratre for a sum of Rs.40,000/-, therefore, he should return the same after obtaining it from him or his vehicle and on his refusal he assaulted him with the back of spade on his temporal region & shoulder. When Bhajanbai stopped him from assaulting, the appellant assaulted her also and pressed her left eye with his thumb as a result of which blood started oozing from her eye. He also assaulted Bhajanbai by spade on her head & back. The appellant searched for Rohit inside the home, however, Rohit hid inside the granary. The incident was reported by Bhajanbai at about 3.00 a.m. immediately after the incident vide Ex.P-15. Both the injured were sent for medical examination to the Primary Health Centre, Sarangarh where they were examined by Dr. R.L. Sidar (PW-5), Medical Officer at about

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4.30 a.m. on 23.3.2004 and their injury reports are Ex.P-7 & P-8 respectively.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Sarangarh and after committal the same was received on transfer for trial by learned 1st Additional Sessions Judge. During trial, the prosecution examined ten witnesses in all, thereafter the statement of accused was recorded under Section 313 of Cr.P.C. in which the appellant pleaded innocence and false implication. However, learned Sessions Judge after hearing learned counsel for the respective parties convicted and sentenced the appellant, as mentioned in Para 1 of this judgment.

Learned counsel for the appellant submits that the assaults were made by the back side of spade over the injured persons and therefore, the intention of causing death of injured Vishnu cannot be attributed to the appellant. Referring to the statement of Dr. R.L. Sidar (PW-5) it has been argued that this witness has admitted in Para 13 that Vishnu did not suffer any fracture over her temporal bone and there is overwriting in the report of Ex.P-12 and thus, the report of Ex.P-12 is the doctored report. Therefore, the conviction of the appellant under Section 307 of IPC cannot be sustained and the offence against the appellant does not travel beyond Section 326 of the IPC.

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On the other hand, learned counsel for the State has supported the impugned judgment.

I have heard learned counsel for the parties. I have perused the impugned judgment as also the evidence available on record.

Dr. R.L. Sidar has been examined as PW-5 and he has proved the injury report (Ex.P-7) of Bhajanbai in which he found one lacerated wound over her left eye. It is mentioned that because of the injury her vision in the left eye has been affected. He also found two bruises on her left shoulder and left thigh. As per X-ray report of Ex.P-11, Bhajanbai has suffered fracture of left clavicle bone. Similarly, he has also examined injured Vishnu and noticed one lacerated wound over his left chin and bruises around that injury and one abrasion over left shoulder. He also noticed swelling above and lid of the left eye as a result of which his left eye was closed. He further observed bleeding from ear. He advised for X-ray of the skull, as there was bleeding from the left ear. X-ray report of skull of injured Vishnu is Ex.P-12. In reply to the query from the police, he has opined that the injuries caused by back side of the spade could result in death.

So far as the argument of learned counsel for the appellant that there is overwriting in the report of Ex.P-12 where after scoring out the word 'simple', the word 'grievous' has been substituted is

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concerned, X-ray film of the report was available on record and it was open to the appellant to verify the injury, which was actually sustained by the injured Vishnu, however, no question ~~has~~ was put to the doctor on the basis of X-ray film available on record and therefore, presence of some overwriting over the leaf of X-ray report will not discredit the version of the doctor, who has opined that there was a fracture in the left side of temporal bone of Vishnu.

So far as the arguments of learned counsel for the appellant that the assaults were made by the back side of the spade, therefore, the appellant had no intention to cause death is concerned, for the purpose of inferring intention the weapon of offence, the force with which the assault is made and the portion of the body where the victim is assaulted is to be considered. In the instant case, the allegation is that the appellant entered the house of injured persons in the midnight and assaulted with the back of spade over vital portion of Vishnu i.e. head, shoulder and left eye as a result of which blood started oozing out from the right ear. Therefore, taking into consideration the nature of injuries sustained by injured Vishnu, this court is of the considered opinion that the trial court has rightly held that the offence falls under Section 307 of the IPC.

So far as the involvement of the appellant in crime in question is concerned, all the three witnesses i.e. Bhajanbai (PW-7), Vishnu

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(PW-8) & Rohit (PW-9) have categorically stated that they were sleeping in their house on the date of incident in the night when the accused armed with spade entered the house and picked up a quarrel in the name of return of Rs.40,000/- being the amount towards surety which the injured Vishnu stood for Chandra Shekhar Ratre (PW-1) and on his refusal he first assaulted Vishnu and thereafter he assaulted Bhajabai and also searched for Rohit. Their statement is duly corroborated by the medical evidence, as both the injured persons have sustained grievous injuries over their person, which has been duly proved by the doctor (PW-5) and therefore, in the considered opinion of this Court the court below has rightly convicted and sentenced the appellant under the aforesaid sections.

So far as the submission of learned counsel for the appellant that while sentencing the appellant the court below ought to have dealt with leniency is concerned, I am unable to accept this argument particularly considering the conduct the appellant in entering the house in the midnight and assaulting two persons, who were sleeping in their house.

In the result, the appeal has no substance, the same is liable to be dismissed and it is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

Roshan